IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.258 OF 1993

Namdeo Ganpati Sonawane. .. Petitioner
Vs.
Dnyaneshwar Laxman Navaskar & Ors. .. Respondents
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Shri S.V.Sadavarte for the petitioner.

Shri K.K.Tated, AGP for the respondents.
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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 23rd NOVEMBER, 2004.

P.C.

1. Heard the learned advocate for the petitioner and the learned AGP for the respondents.

2. The grievance of the petitioner is that inspite of the order dated 16th April, 1993 passed in the Appeal from Order No.773 of 1991 imposing condition upon the respondent No.1 that the possession of the petitioner in relation to the petitioner's share in the suit property should not be disturbed, even though the respondent No.1/ original defendant was permitted to dispose of his undivided share in the property, the respondent No.1 has disturbed the

possession of the petitioner, and therefore, there is willful disobedience by the respondents of the said order.

3. Perusal of the order dated 16th April, 1993, however, discloses that the respondent No.1 was allowed to dispose of his undivided share in the property, subject to condition that he shall not disturb the petitioner in respect of his share in the property. It is also to be noted that the impugned order recorded the fact that the respondent No.1 had already filed the suit for partition of the property. Obviously, therefore, the said order has proceeded on the basis that the petitioner as well as the respondent No.1 has undivided shares in the property. No doubt, it is sought to be contended that the respondent No.1 has 10% share whereas the petitioner has 90% share in the property. Nonetheless, when it is undivided share, it goes without saying that one of the co-owners cannot be said to be in exclusive possession of any specific part of the property, and even if one of the co-owners appears to be in the possession of the entire property, his possession would be considered as on behalf of all the co-owners of the property. The order dated 16th April, 1993 nowhere identifies any specific portion of the land of

the suit property to be in possession of the petitioner. Beside, the suit for partition is already pending. Being so, it would be too premature for this Court to proceed against the respondents for contempt of Court on the allegation against them regarding willful disobedience of the order dated 16th April, 1993.

4. In the circumstances, therefore, it is not possible for this Court to arrive at finding about the willful disobedience alleged to have been committed by the respondents in respect of the said order dated 16th April, 1993, in the absence of clear identity of the extent of the land of the suit property in possession of the petitioner and clear judicial pronouncement in that regard. The petition for contempt proceedings against the respondents therefore fails and is hereby dismissed. The proceedings are dropped. Notice stands discharged with no order as to costs.